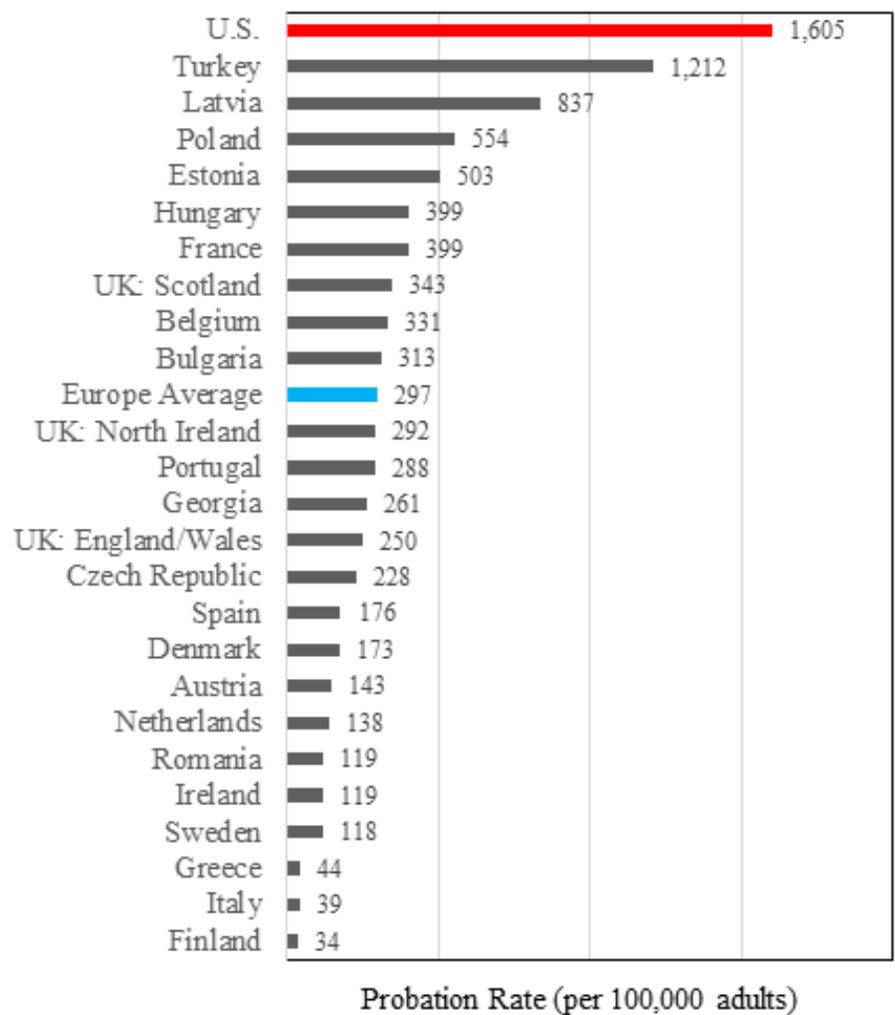


AMERICAN EXCEPTIONALISM IN COMMUNITY SUPERVISION

BY ALESSANDRO CORDA, PH.D. AND MICHELLE S. PHELPS, PH.D.

In recent years, increasing public attention has been drawn to the causes and consequences the rapid expansion of imprisonment in the U.S. to the point of mass incarceration. However, as numerous recent reports and academic articles have highlighted, the U.S. is “exceptional” not just for its massive prison population, but also for its rates of community supervision. As documented in Figure 1, as of 2013 the overall U.S. probation supervision rate in the U.S. was more than five times the European average rate (1,605 on probation per 100,000 adults, compared to 297)—a difference that cannot be easily attributed to

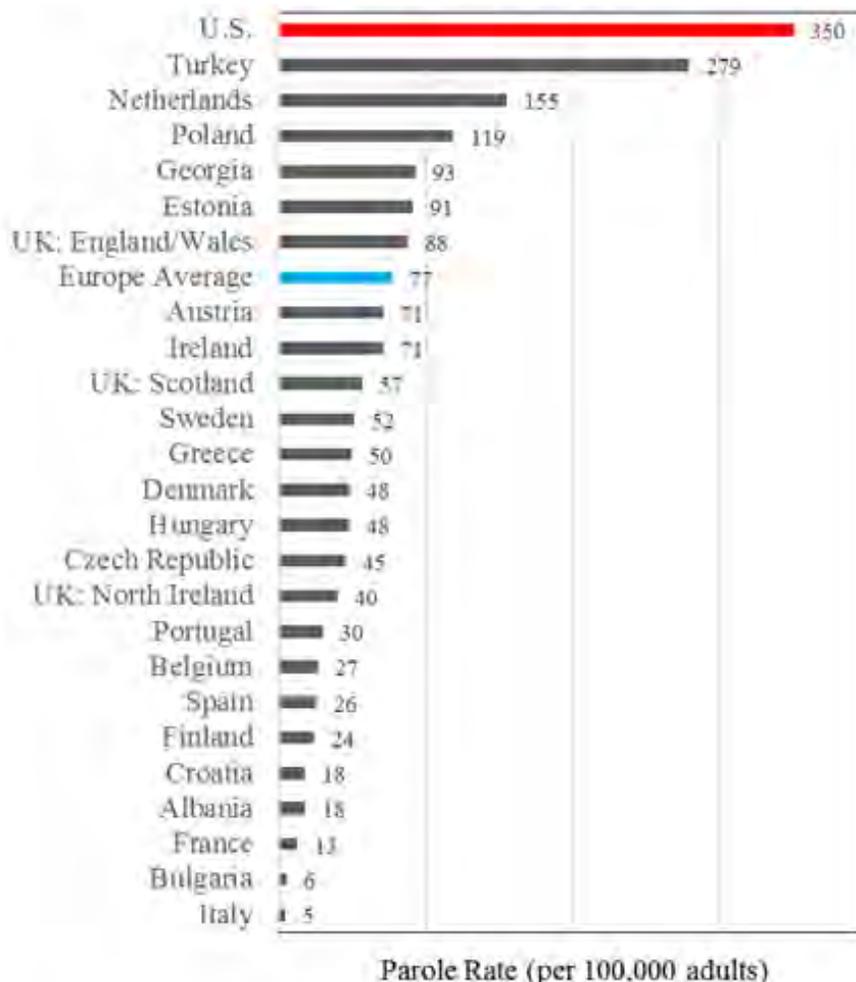
FIGURE 1. AMERICAN EXCEPTIONALISM IN PROBATION SUPERVISION RATES (2013)



Source: Alper, Corda & Reitz (2016), Robina Institute of Criminal Law & Criminal Justice, American Exceptionalism in Probation Supervision.

crime rates alone (Alper, Corda, & Reitz, 2016). In addition, as Figure 2 documents, the overall parole supervision rate in the U.S. (350 per 100,000 adults) was more than four times the European average rate (77) (Corda, Alper, & Reitz, 2016). In this review piece, we will detail these cross-national differences, concluding with a discussion of how community supervision practices are different in the U.S. as well. Our central conclusion is that the U.S. could have a much smaller population on community supervision (including both fewer admissions and shorter terms) with few public safety repercussions.

FIGURE 1. AMERICAN EXCEPTIONALISM IN PAROLE SUPERVISION RATES (2013)



Source: Corda, Alper & Reitz (2016), Robina Institute of Criminal Law & Criminal Justice, American Exceptionalism in Parole Supervision.

We begin by considering cross-national comparisons of crime rates. Despite the absence of reliable cross-national data systems (and different legislative definitions of offenses and report methods), a general agreement exists today that crime has substantially dropped in the U.S. and most European countries over the past two decades (Tonry, 2014). Trends show that crime rates began to steeply increase in both the U.S. and Europe from the 1970s onwards and then started to decline sharply in the 1990s, with the trend becoming more stable as of the year 2000. Contrary to the general wisdom, recent studies even suggest that rates of property and non-lethal violent crimes are higher today in Europe than in the U.S., the opposite of what was observed 30 years ago (Buonanno et al., 2011).

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American crime rates today resemble those of the 1960s. However, American homicide rates still remain significantly high by Western standards (Reitz, in press).

For both probation and parole, the international comparisons would be even starker if not for a handful of European countries with high community supervision rates.

Despite the many similarities across crime rates, except for homicide, the U.S. has exceptionally high rates of criminal justice supervision. While the trend toward greater incarceration rates has been well documented (see Western, 2006), the development of mass probation (Phelps, 2016) has gone relatively unnoticed. Between 1980 and its peak in 2007, the U.S. state and federal probation population reported to the Bureau of Justice Statistics grew from 1 million to over 4.2 million. Using population data from the census, this translates into an overall prevalence rate of 1 in 53 U.S. adults. For black Americans, that rate rises to 1 in every 21 adults being on probation at the end of the year—and up to 1 in 12 black men (Phelps, 2016). Even after recent declines in the probation population, nearly 3.8 million adults remain under probation supervision as of 2015 (Kaeble & Bonczar, 2016).

As noted above, by 2013 the overall U.S. probation supervision rate was more than five times the average rate for all European countries.¹ In all reporting European countries, with roughly twice the population of the U.S., only 1.5 million adults were under probation supervision. Further, several U.S. states with the highest rates of probation supervision (e.g., Ohio, Rhode Island, Idaho, and Indiana) had rates that are more than eight times the average European rate (Alper, Corda, & Reitz, 2016). Georgia is such an outlier that the state's probation supervision rate alone is greater than the *total* rate of criminal justice control in all other U.S. states (Rabuy & Wagner, 2016).

In addition, as Robinson and colleagues (2013) note, this expansion of probation was part of a broader (and international) expansion of supervision in the community—

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what they and others refer to as “mass supervision.” U.S. parole rates are similarly exceptional in international comparisons—and are the only correctional population in the U.S. continuing to grow in recent years (Kaeble & Glaze, 2015). In 2013, the overall U.S. parole supervision rate was more than four times the average rate across European jurisdictions. In terms of raw population numbers, 853,200 adults were on parole in the U.S. at the federal and state level, compared to 314,228 on parole in all reporting European countries. This is true even though discretionary release has become increasingly uncommon, as more and more ex-prisoners are automatically placed on post-release supervision added to the end of determinate sentences (Ruhland et al., 2016; Scott-Hayward, 2013). As Corda, Alper, and Reitz (2016) document, U.S. states with the highest rates of parole supervision (e.g., Pennsylvania, Arkansas, and Louisiana) have rates that are 10 to 13 times the average European rate.

For both probation and parole, the international comparisons would be even starker if not for a handful of European countries with high community supervision rates. Turkey stands as the European country with the highest probation and parole rates. In 2013, Turkey’s probation rate was 75% of the overall U.S. rate, while the parole rate was 80% of the U.S. rate. Nearly half (46%) of the European

parole population was reported by Turkey alone. Excluding Turkey from the statistics would make the average European parole rate decline by nearly 40%, further widening the international gap between Europe and the U.S.

Finally, in addition to exceptionally high rates of supervision, the U.S. is distinct for the uniquely punitive experience of community supervision as well. Rhine and Taxman (in press) outline five dimensions of international variation in probation, including the overall mission or vision of probation, length of supervision, intensity of control, coerciveness of programming or treatment, and the consequences of violating probation. The U.S. stands apart from other Western countries in the degree to which probation departments emphasize an enforcement and control-based orientation (as opposed to a social work orientation), which influences all the other indices—including longer supervision periods, more coercive supervision, and less rehabilitation-oriented assistance. This emphasis is perhaps clearest in revocation rates, which are notably high in the U.S. Among probationers leaving probation in 2015, for example, only 62% of exiting probationers completed successfully, while 15% were incarcerated nationwide (Kaeble & Bonczar, 2016). Thus, while community supervision is often described as an act of leniency (e.g., a sentence meted out in lieu of imprisonment),

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scholars argue we must also understand probation as another facet of over-criminalization in the U.S. (Doherty, 2016; Klingele, 2013; Phelps, 2016; Robinson, McNeill, & Maruna, 2013).

The language and logic of parole varies internationally as well. American parole release decisions and supervision practices are frequently characterized as being dominated by risk aversion (Corda, Alper, & Reitz, 2016; Simon, 1993). In contrast, in most of Europe, discourse on conditional release mainly revolves around human dignity and procedural justice. U.S. parole boards are usually staffed with political appointees whose release decisions focus primarily on public safety risks. As a result, parole decision-making in the U.S. is influenced by the political climate. In much of Europe, parole decisions are made by special sentence implementation courts that are part of an independent judicial branch of government and are composed of professional judges and lay experts in criminological and behavioral sciences. Such courts exercise their function fully insulated from political pressure. Finally, once an American inmate is released into the community, burdensome conditions are frequently imposed, representing significant hurdles to his/her reintegration into society. In Europe, conditional release practices more successfully reintegrate returning citizens into the social fabric after imprisonment (van Zyl Smit & Corda, in press).

Taken altogether, this evidence suggests that the U.S. could substantially reduce its community supervision population with little risk to public safety. States should closely reexamine who is being placed on probation and parole each year and the lengths of their supervision. Options for early termination of the lowest-risk and most successful probationers and parolees should be explored.

As a separate but connected issue, more attention should be given to the number and burdensomeness of the conditions imposed on persons supervised in the community. Some experts in the field allege that probationary sentences (and, in some cases, parole supervision) may do little to control crime, and frequently do more harm than good (Klingele, 2013). Community supervision can make “reentry” into the law-abiding community more difficult than it needs to be, such as when meetings with probation officers interfere with work responsibilities, or supervision and program fees constitute a hurdle for probationers’ ability to support themselves and their families. Concerns of this kind should be carefully evaluated by lawmakers in every state. If some aspects of probation are counterproductive to the reentry process, or outright “criminogenic,” it should be a high priority everywhere to discontinue them. The financial expense and opportunity costs of mass supervision



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should also be assessed nationwide—both in terms of the costs of the community supervision itself and in terms of its contribution to incarceration rates through revocation.

The problems of mass incarceration and mass supervision are intimately linked, and they must be tackled together. While concerns about reoffending are critical, community supervision must do more than be a “prison without bars” to be successful. Our European counterparts provide some useful models for both restraining community supervision populations and aligning policies that support community reintegration. The international standards issued by the Council of Europe have played a key role in creating better consistency and stronger practices across the continent (Grant & McNeill, 2014; Morgenstern & Larrauri, 2013). One of these guidelines states, in part:

The nature, content and methods of implementation of community sanctions and measures shall not jeopardise the privacy or the dignity of the offenders or their families, nor lead to their harassment. Nor shall self-respect, family relationships, links with the community and ability to function in society be jeopardized. (1993, Rule 23).

These rules further outline many of the “best practices” of community supervision, including fostering positive relationships with supervising officers, providing relevant and tailored treatment interventions (e.g., drug treatment, counseling, and anger management programs), and minimal burdensome supervision fees (Council of Europe 2010 & 2003). The U.S. could follow this lead by building a stronger national consensus on the best models of sentencing, supervision, and revocation for local jurisdictions and states to adopt.

ENDNOTES

1 This statistic only includes countries that report supervision data to the Council of Europe and had available adult population totals for calculating the supervision rate. Probation rates were unavailable for Andorra, Bosnia-Herzegovina, Iceland, Liechtenstein, Monaco, Montenegro, San Marino, and Slovak Republic. Parole rates were unavailable for Andorra, Bosnia-Herzegovina, Germany, Iceland, Latvia, Liechtenstein, Malta, Monaco Montenegro, Romania, San Marino, Slovak Republic and Slovenia. Not all countries with available data are included in Figures 1 and 2.

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